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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/804,391

03/18/2004

Gary W. Guenst

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EXAMINER

LACYK, JOHN P

ART UNIT

PAPER NUMBER

3735

MAIL DATE

DELIVERY MODE

07/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/804,391

Applicant(s)

GUENST ET AL.

Examiner

John P. Lacyk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 18-23 and 32-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 24-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>06/21/04; 04/05/06</u> | 6) <input type="checkbox"/> Other: ____ |

1. Applicant's election with traverse of Group I, claims 1-17, 24-31 in the reply filed on 04/30/07 is acknowledged. The traversal is on the ground(s) that there would be no additional burden to also search group II. This is not found persuasive because as shown in the requirement for restriction the restriction are independent because of their separate status in the art in view of their different classification and that the product, as claimed, could be used in a materially different process of method for treating different areas of the body as discussed in the restriction.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 18-23 and 32-37 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 04/30/07.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 4-11, 13-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Kimberley et al (3,361,133).

Kimberley et al discloses a device (see Figures 1 and 3) used to hold or clamp a blood vessel having a handle (5); a collar (1 and 2) that encircles the blood vessel, and the collar being connected to a vacuum port that is coupled to a vacuum source (6 and 7).

The collar has an inner sleeve (13 and 14) that is made of a porous material such that

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when a vacuum is applied the porous material acts as a plurality of suction apertures to hold the blood vessel to the clamp. As shown in Figure 3, the collar is comprised of two collar halves that together form a cylinder. The handle (5) includes swingable arms (6 and 7) which are considered to be part of the handle as well as malleable at least to some degree since they are swingable.

5. Claims 1-2, 4-11, 13-17, 24-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Peternel (3,561,448).

Peternel discloses a device used to hold or clamp a blood vessel having a handle ((80 and 108), a first and second collar (16 and 18), that encircles the blood vessel, and the collars being connected to a vacuum port that is coupled to a vacuum source. The collars have a plurality of passages or apertures (56) to allow fluid communication of the vacuum source to the blood vessel to hold the blood vessel to the clamp. As shown in Figure 3, the collars are comprised of two collar halves that together form a cylinder. The handles include vacuum lines (96) which are considered to be part of the handle. Each arm (80 and 108) of the handle are considered to be first and second prongs that are attached to the first and second collars and are "malleable whereby the distance may be changed" in that when the arms are moved the distance is changed with respect to each other.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimberley et al or Peternel.

While Kimberley et al and Peternel do not specifically show a ring to hold the two halves of the collar together, it would have been obvious to one skilled in the art at the time the invention was made to use any well known securing means to hold the halves together such that the device would be held onto the blood vessel in order to operate properly.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 5, 13, and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5 and 13 further define the blood vessel, which fails to further limit the device and is directed to the intended use of the device. Further the blood vessel is part of the body and is not part of the device and it is improper to claim part of the body.

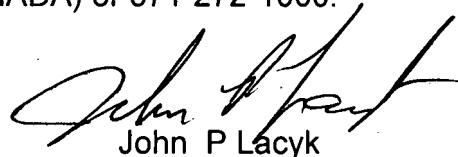
Claim 26 further defines that the first and second prongs are malleable whereby the distance may be changed, however the claim fails to state what distance may be changed and what it is changed with respect to, the distance between each prong, the distance between the prong and the collar, etc.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Lacyk whose telephone number is 571-272-4728. The examiner can normally be reached on Mon-Fri, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chuck Marmor, II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



John P Lacyk
Primary Examiner
Art Unit 3735

J.P. Lacyk